

## **No tax on Income from shipping remitted outside Singapore if it was taxable therein on accrual basis**

**Summary – The Hyderabad ITAT in a recent case of Far Shipping (Singapore) Pte. Ltd., (the Assessee) held that where income earned by Singapore based shipping company through shipping business carried out at Indian ports, was not taxable in Singapore on basis of remittance but on basis of accrual, clause (1) of article 24 of Indo-Singapore DTAA would not apply to deny benefit of article 8 of Indo-Singapore DTAA to said company**

### **Facts**

- The assessee was a shipping company based in Singapore. Through the shipping business carried out at Indian ports, it earned income, on which, it claimed immunity from Indian income-tax by relying upon article 8 of DTAA between India and Singapore.
- The Assessing Officer invoked the provisions of article 24(1) *i.e.*, limitation of benefits clause of the DTAA, on the reason that the assessee had not substantiated the remittance of money to Singapore in all the voyages. Accordingly, he demanded tax on the amount received for each voyage under section 172(4).
- On appeals before the Commissioner (Appeals), the assessee furnished the additional evidence in the form of certificate from the Inland Revenue Authority of Singapore that the amount had been considered for tax on accrual basis. The assessee also furnished various details of bank accounts and remittances and also certificate from the auditor of the assessee-company that the amounts/invoices pertaining to the voyages had been taken into account.
- The Assessing Officer however, in the remand proceedings did not accept the assessee's contentions stating that the assessee had not furnished voyage wise remittance to verify the amount of remittance, accordingly, he reported to the Commissioner (Appeals) that the assessee had not substantiated the remittance of the money.
- The Commissioner (Appeals) not only rejected the certificate of the Inland Revenue Authority of Singapore on the reason that the assessee did not substantiate the remittances but also rejected the additional evidence and confirmed the orders of the Assessing Officer.
- On appeal:

### **Held**

- Article 24 of the DTAA between India and Singapore provides a limitation of relief relating to remittance basis of taxation which is in few countries like Singapore and United Kingdom. However, whether this limitation clause will apply to the DTAA, so as to oust the provisions of article 8 has been considered by the Gujarat High Court analysing India - Singapore DTAA and that too, in the case of a shipping company *M.T. Maersk Mikage v. DIT (IT)* [\[2016\] 242 Taxman 300/72 taxmann.com 359](#) wherein it was held that if the income in question was taxable in Singapore on the basis of receipt or remission and not by reference to the full amount of income accruing, clause-1 of article

24 would apply and dependent on the facts of the case, exemption as per article 8 either in whole or in part would be excluded.

- The aforesaid judgment of the Gujarat High Court clearly clinches the issue in favour of assessee, as the Court has categorically held that the shipping company is not taxable in Singapore on the basis of remittance, but on accrual basis and therefore, para-1 of article 24 would not be applicable. Court has relied upon the confirmation letter/certificate issued by the IRAS, which confirms the taxability of global shipping income in Singapore on accrual basis. Thus, the conclusion and findings of the Commissioner (Appeals) stands negated by these decisions and therefore, the order of the Commissioner (Appeals) is to be rejected.
- Thus, in view of the clear findings on the issue, it is held that the Assessing Officer/Commissioner (Appeals) was not justified in denying the benefit of article 8 by invoking the limitation clause of article 24 of India - Singapore DTAA. Since the issue is squarely covered by the said decision of the Gujarat High Court, the exercise undertaken by the Assessing Officer and Commissioner (Appeals) in correlating the remittances and denying the certificate issued by the Government authority of Singapore is not proper and can further hold that they have no jurisdiction to enquire into those matters, once article 8 is invoked. The shipping income is to be exclusively taxed by the other contracting state once the residence of the ship is established. Since there is no dispute with reference to residence of the ship being that of Singapore, the jurisdiction to tax the remittances specified therein under article 8 lies exclusively with Singapore. In view of that, the orders of the Assessing Officer and Commissioner (Appeals) are set aside and they are directed to allow the benefit of article 8 to all the voyages involved in all these appeals.